IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.Rev.Pet.No. 760 of 1998()

CRA.56/1996 of ADDL. SESSIONS COURT, ALAPPUZHA
CC.138/1994 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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REVN. PETITIONER:

THANKACHAN, S/O.VASUDEVAN, KOCHUPARAMBIL VEEDU,
WARD NO.VI, ALAPPUZHA MUNICIPALITY.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY DIRECTOR OF PUBLIC PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3897/1998 IN Crl.R.P.NO.760/1998

CLOSED

SD/- K.R.UDAYABHANU, JUDGE

02/07/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No. 760/1998

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Dated this the 2nd day of July, 2007

O R D E R

The revision petitioner stands convicted for the offences under Section 279, 337 and 338 of the Indian Penal Code and sentenced to undergo simple imprisonment for three months under Section 338 I.P.C and to pay a fine of Rs.1000/- and in default to, undergo simple imprisonment for 45 days for the offence under Section 279 I.P.C. No separate sentence is awarded for the offence under Section 337 I.P.C.

2. The prosecution case is that on 15/03/1993, at about 5.30 p.m., the accused/revision petitioner driving bus, No.KRA 7043, from west to east, in a rash and negligent manner, so as to endanger human life and while overtaking a motor cycle, No.KL-4/4369, driven by PW.1, caused to hit the left front portion of the bus on the right handle of the motor cycle, as a result of which PW.1 sustained fracture on the bones of his right palm and also sustained injuries to his right arm and elbow, and right thigh. The evidence adduced consisted of the testimony of PWs.1 to 8, Exts.P1 to P11.

3. PW.1, the de facto complainant, PWs.2 and 3 the occurrence witnesses have testified in support of the prosecution case. The evidence of PW.5, the Assistant Motor Vehicle Inspector, and the report filed as to the examination of the vehicle, that is, Ext.P3, indicate that there was no mechanical defect to the vehicle. The contention of the counsel for the revision petitioner is that the evidence as to the identity of the accused in the absence of the examination of the owner or conductor of the bus is not convincing and complete. I find that the order of the court below has to be upheld in view of the fact that PWs.1 to 3 have testified as to the identity of the accused that he was the driver of the bus.

4. The medical evidence shows that PW.1 has sustained fracture of the second, third, fourth and fifth metacarpels. The incident has taken place at day time, at 5.50 p.m. On a consideration of the evidence, I find that the contention of the revision petitioner in this regard is without merit. It is held that the concurrent findings of the court below as to the guilt of the accused is only to be confirmed. The conviction is, therefore,

confirmed. All the same, considering the plea of the revision petitioner for modification of the sentence pointing out that the incident has taken place about 15 years ago, and that so far the accused was facing the criminal proceedings, I find that the sentence is liable to be modified.

In the circumstances, sentence of imprisonment imposed under Section 338 I.P.C is modified to imprisonment till the rising of the court and to pay a compensation of Rs.7,500/- to PW.1 and in default, to undergo simple imprisonment for three months. The revision petitioner shall appear before the Judicial Magistrate of the First Class Court-II, Cherthala, on 14/08/2007 to receive the sentence. No separate sentence is awarded for the rest of the offences. The order that driving licence is suspended for six months is set aside.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.760/1998

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J U D G M E N T

2nd July, 2007